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Supreme Court, U.S.
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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1999

MIGUEL A. RODRIGUEZ,

Petitioner

v.

MUHLENBERG HOSPITAL CENTER

Respondent

APPENDIX OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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TABLE OF CONTENTS

	PAGE
Memorandum Opinion dated June 17, 1999, per Nygaard, Stapleton, and Cowen, Circuit Judges, entered June 24, 1999	1a
Memorandum Opinion dated Nov. 12, 1998, per Kauffman, J., entered Nov. 13, 1998	7a
Memorandum Order dated June 25, 1998, entered June 26, 1998 per Kauffman, J.	17a

Publisher's Note:

Page(s) 1a missing in original document

MEMORANDUM OPINION OF THE COURT

NYGAARD, Circuit Judge.

Rodriguez appeals the District Court's grant of judgment as a matter of law under Fed. R. Civ. P. 50(a) for appellee, Muhlenberg Hospital, following a trial on Rodriguez's race and age discrimination claims. Our view of this grant is plenary. See Doby v. DeCrescenzo, 171 F.3d 858, 873-74 (3d Cir. 1999). Granting judgment as a matter of law is appropriate only when viewing the evidence in the light most favorable to the party opposing the motion, no jury could decide in that party's favor. See Walter v. Holiday Inns, Inc., 985 F.2d 1238 (3d Cir. 1993). We will affirm.

I.

The facts are well known to the parties and we will merely summarize. Rodriguez is a Hispanic male who was 62 years old when he worked as a security guard at the hospital. He was fired after an altercation with a drunk and unruly patient, during which he was reported to have punched the patient in the face. Rodriguez sued under the Age Discrimination in Employment Act, 29 U.S.C. §621, et seq. ("ADEA"), and Title VII of the Civil Rights Act, 42 U.S.C. §2000e-1 et seq. The parties accept that Rodriguez asserted a prima facie case under both Acts by showing that: (1) he is an Hispanic man (Title VII) over forty (ADEA), (2) qualified for the position, (3) who has dismissed despite being qualified, and (4) who was replaced by a person sufficiently younger to allow an inference of age discrimination (ADEA) and outside the protected racial class (Title VII). See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973)(Title VII); Billet v. CIGNA Corp., 940 F.2d 812, 816 n.3 (3d Cir. 1991)(ADEA).

Upon the showing of a prima facie case, the burden shifts to the employer to "articulate some legitimate, nondiscriminatory reason for the employee's rejection." McDonnell Douglas, 411 U.S. at 802. Muhlenberg met that burden when its CEO testified that he fired Rodriguez because Rodriguez had punched a patient. See A317 ("I didn't need to have further information, because I don't tolerate that kind of activity."). The CEO also testified that, based on his understanding of the hospital's investigation, there was no doubt in his mind that Rodriguez's behavior was inappropriate. See A321.

Thus, this case turns on the third step in which the plaintiff bears the burden of showing evidence by which the fact finder could either: (1) disbelieve the employer's proffered reason, or (2) conclude that discrimination was more likely the primary motivation behind the firing. See Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994). Rodriguez relies on the first prong of Fuentes, arguing that he produced evidence from which a fact finder could disbelieve the Hospital's stated reason. Such evidence, however, must be sufficient to show "not merely that the employer's proffered reason was wrong, but that it was so plainly wrong that it cannot have been the employer's real reason." Keller v. Orix Credit Alliance, Inc., 130 F.3d 1101, 1109 (3d Cir. 1997). In this regard, Rodriguez fails.

Rodriguez's primary argument is that the Hospital CEO's explanation of this reason for firing Rodriguez contradicted the Hospital's written policy regarding force. Even if it did, however, this fact is simply insufficient to create a reasonable belief that the CEO's stated reason was pretext. Employer's may often act out of accord with their policies, but this alone does not indicate that their stated reasons for acting are pretextual. Rodriguez also asserts that:

(1) he did not punch the patient, (2) there was no written policy explicitly prohibiting the punching of a patient, and (3) the Hospital was not entitled to fire him. Again, even if these are all true, they still do not suggest that the stated reason for his firing was a pretext. The evidence clearly shows that the CEO fired Rodriguez because he believed that Rodriguez had punched a patient. Rodriguez therefore has no ADEA or Title VII claim. The fact that his firing may have been "wrong or mistaken" simply does make it actionable under either of these statutes. See Fuentes, 32 F.3d at 765.

II.

In sum, Rodriguez has not met the threshold burden of showing that a reasonable fact finder could disbelieve Muhlenberg's proffered reason for firing Rodriguez. The judgment as a matter of law was therefore proper and will be affirmed.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Richard L. Nygaard
Circuit Judge

UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 98-2048

MIGUEL A. RODRIGUEZ,
Appellant
V.
MUHLENBERG HOSPITAL CENTER

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(D.C. Civil No. 97-CV-00636)
District Judge: Honorable Bruce W. Kauffman

Submitted Under Third Circuit LAR 34.1(a)
June 17, 1999

BEFORE: Nygaard, Stapleton and Cowen, Circuit Judges.

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on June 17, 1999.

On consideration whereof it is now ordered and adjudged by this court that the judgment of the district court entered on October 16, 1998, is hereby AFFIRMED.

Costs taxed against appellant.

ATTEST:

_____

Clerk

Date: 24 June 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MIGUEL RODRIGUEZ	:	CIVIL ACTION
Plaintiff	:	NO. 97-CV-636
	:	
vs.	:	
	:	
MUHLENBERG	:	
HOSPITAL CENTER	:	
Defendant	:	

MEMORANDUM OPINION

Bruce W. Kauffman, J.

This Opinion follows an Order of the Court, dated October 16, 1998, granting judgment as a matter of law in favor of Defendant Muhlenberg Hospital Center ("Muhlenberg" or "the hospital") in this race and age discrimination case.

I. BACKGROUND

Plaintiff Miguel Rodriguez ("Plaintiff") is a sixty-two year-old Hispanic male, who worked as a security guard for Muhlenberg between 1984 until his termination on November 21, 1995. On October 28, 1995, Plaintiff was involved in an altercation with an unruly patient (known in the trial as "John Doe") in Muhlenberg's emergency room. It was undisputed that during the incident, the patient struck Plaintiff and Plaintiff, in turn, physically subdued the patient. In dispute was whether Plaintiff struck "John Doe" in the face in the course of subduing him. Muhlenberg conducted an investigation and fired Plaintiff because, contrary to

undisputed hospital policy, he had punched the patient during the altercation.

Subsequently, Plaintiff filed this suit, claiming that he was subjected by Muhlenberg to age and national origin discrimination, in violation of the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq., and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-1 et seq. He alleged that his age and national origin were the real motives underlying Muhlenberg's decision to terminate him. In response, Muhlenberg asserted that the decision to terminate was based solely on the fact that Plaintiff had punched a patient in violation of Muhlenberg policy.

At the end of Plaintiff's case, Muhlenberg moved, pursuant to Rule 50(a) of the Federal Rules of Civil Procedure, for judgment as a matter of law. Because Plaintiff had failed to introduce any evidence from which a reasonable jury could rationally conclude that Muhlenberg's explanation of its decision to terminate was pretextual and, in reality, motivated by a discriminatory animus, the Court granted Muhlenberg's motion.

II. DISCUSSION

In Order to establish a prima facie case of age discrimination, a plaintiff must prove that: a) he is over 40; b) he was qualified for the position that he wished to retain; c) he was dismissed despite being qualified; and d) he was ultimately replaced by a person sufficiently younger to permit an inference of age discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); Billet v. CIGNA Corp., 940 F.2d 812, 816 n.3 (3d Cir. 1991). In order to establish a prima facie case of national origin discrimination, a plaintiff must show that: a) he is a member of an ethnic minority; b) he was qualified for the position that he wished to retain; c) he was dismissed from the position despite being

qualified; and d) he was ultimately replaced by a person outside the protected class. Id. [1]

Once a plaintiff proves his prima facie case of discrimination, the burden of production shifts to the defendant to "articulate some legitimate, nondiscriminatory reason for the employee's rejection." McDonnell Douglas, 411 U.S. at 802. The employer satisfies this burden by producing evidence which, if true, would "permit the conclusion that there was a nondiscriminatory reason for the unfavorable employment decision." Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994). "The employer need not prove that the tendered reason actually motivated its behavior, as throughout this burden-shifting paradigm the ultimate burden of proving intentional discrimination always rests with the plaintiff." Id. Once the employer has satisfied its burden of production, the plaintiff may avoid summary judgment or judgment as a matter of law by offering evidence from which a reasonable trier of fact could rationally either: (1) disbelieve the employer's offered reason; or (2) conclude that a discriminatory motive has more likely than not a motivating reason behind the employer's action. Keller v. Orix Credit Alliance, 130 F.3d 1101, 1108 (3d Cir. 1997).

Plaintiff asserts that the jury could have found for him based solely on the elements of his prima facie case and a conclusion that Muhlenberg's proffered legitimate explanation was merely pretextual because the hospital incorrectly concluded that he struck a patient. Plaintiff fails to recognize, however, that

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[1] For the purposes of this Opinion, the Court has accepted the validity of Plaintiff's prima facie case under both claims of discrimination.

> [t]o discredit the employer's proffered reason . . . the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent, or competent. Rather, the non-moving plaintiff must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, and contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them 'unworthy of credence.'

Fuentes, 32 F.3d at 765 (internal citations omitted) (emphasis added)(quoting Ezold v. Wolf, Block, Schorr & Solis-Cohen, 983 F.2d 509, 531 (3d Cir. 1992)).

Under Rule 50(a), "[I]f during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for their party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue." Fed. R. Civ. P. 50(a). A court should grant a motion for judgment as a matter of law "only if viewing the evidence in the light most favorable to the party opposing the motion, no jury could decide in that party's favor." Walter v. Holiday Inns, Inc., 985 F.2d 1232, 1238 (3d Cir. 1993). To survive Muhlenberg's Motion for Judgment as a Matter of Law, Plaintiff must have "produced sufficient evidence to raise a genuine issue of fact as to whether the employer's proffered reasons were not its true reasons for the challenged

employment action." Sheridan v. DuPont, 100 F.3d 1061, 1067 (3d Cir. 1996). Because Plaintiff offered no evidence which would permit a reasonable jury rationally to conclude that the employer's proffered explanation was a fabrication, he failed to meet this burden.

At trial, Plaintiff elicited testimony from four witnesses and introduced seven exhibits into evidence. The record he created, however, lacks any evidentiary basis from which a reasonable jury could rationally conclude that Muhlenberg's proffered non-discriminatory reason for firing him, namely, that he punched a patient in violation of undisputed hospital policy, was fabricated. Plaintiff rested virtually all of his charge of pretext on the claim that he did not, in fact, punch the unruly patient during the incident in question. In this regard, Plaintiff testified repeatedly that, although he did physically restrain the patient, he never used his fist to strike him.[2] (Tr. Oct. 14, 1998, at 120-22; Tr. Oct. 15, 1998, at 36, 38, 40.)

Plaintiff's case amounts simply to an allegation that Muhlenberg was in error in its belief that he had struck the patient. Even if Muhlenberg's decision were wrong, however, that alone would not support a jury finding that the reason proffered by Muhlenberg for its decision was pretextual. See Billet, 940 F.2d at 825; Murray v. SEPTA, No. CIV.A. 96-7971, 1998 WL 98987, at *5 (E.D. Pa.

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[2] However, Plaintiff also conceded on cross-examination: "maybe I punch his face. Maybe, I don't know." (Tr. Oct. 15, 1998, at 61.) Debbie Schaedel, a nurse who was present during the incident, testified that she did not see Plaintiff strike the patient. (Tr. Oct. 14, 1998, at 29-30.) Ms. Schaedel also testified, however, that the reason she had not seen a punch was that she was not in a position to see a punch, even if one had been thrown. (Tr. Oct. 14, 1998, at 45.)

March 9, 1998)(Waldman, J.). It is not for the Court to second guess an employer's personnel decision, without any evidence that age or race was a determinative factor in the result. Tenthoff v. McGraw-Hill, Inc., 808 F. Supp. 403, 405-06 (E.D. Pa. 1992). In Murray v. SEPTA, Judge Waldman dealt squarely with this issue:

> Plaintiff argues that he was not in fact guilty of the infraction for which he was discharged. This is not sufficient to show pretext. An employer may terminate an employee fairly or unfairly and for any reason or no reason at all without incurring Title VII liability unless the decision was motivated by invidious discrimination. Beser v. Quaker State Oil Refining Corp., 72 F.3d 326, 331 (3d Cir. 1995).
>
> It is the employer's belief that plaintiff violated company policy that is important. See Fuentas, 32 F.3d at 765 ("To discredit the employer's proffered reason, the plaintiff cannot simply show that the employer's decision was wrong or mistaken, since the factual dispute at issue is whether discriminatory animus motivated the employer, not whether the employer is wise, shrewd, prudent or competent"); Billet v. CIGNA Corp., 940 F.2d 812, 825 (3d Cir. 1991)("what matters is the perception of the decision maker"); Holder v. City of Raleigh, 867 F.2d 823, 829 (4th Cir. 1989)("A reason honestly described but poorly founded is not a pretext")(citation and internal quotations omitted); Hicks v. Arthur, 878 F. Supp. 737, 739 (E.D. Pa.) (that a decision is ill-informed or ill-considered

does not make it pretextual), aff'd, 72 F.3d 122 (3d Cir. 1995)(it is the perception of the decision-maker that is relevant); Orisakwe v. Marriott Retirement Communities, Inc., 871 F. Supp. 296, 299 (S.D. Tex. 1994)(employer who wrongly believes employee violated company policy does not discriminate when he acts on that belief).

Murray, 1998 WL 98987, at *5-6.

Plaintiff failed to offer any evidence that Muhlenberg did not believe that he struck the patient. Plaintiff's counsel called William Mason, then president and CEO of Muhlenberg, as a hostile witness. Mason testified that he decided to fire Plaintiff only because he had been reliably informed, after an investigation by trusted employees, that Plaintiff had punched a patient in violation of hospital policy. (Tr. Oct. 14, 1998, at 81.)[3]

At trial, Plaintiff conceded that if he had struck the patient during the incident in question, his conduct would

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[3] Mason testified that he made his decision in reliance upon the recommendation of Jeff Beich, then vice-president of Muhlenberg operations, who had worked under and reported directly to Mason for fifteen years and with whom he shared a relationship of trust and reliance. (Tr. Oct. 14, 1998, at 74.) Beich's recommendation came to Mason after a hospital investigation including several members of management staff, including the head security and the supervisor of the emergency room. (Tr. Oct. 14, 1998, at 80.) Mason further testified that the investigation and recommendation process was consistent with his policy of delegating authority to management. (Tr. Oct. 14, 1998, at 86-87.) In addition to his written statement, (Pl.'s Ex. 2), Plaintiff was afforded the opportunity to orally recount his version of the events to his supervisor, the head of security, before his termination. (Tr. Oct. 15, 1998, at 66-67).

have violated hospital policy. Asked on cross-examination about his understanding of Muhlenberg's use of force policy in effect during the incident, Plaintiff testified as follows:

> Q. All right, Mr. Rodriguez, again, starting at line 12 [of your deposition], the question, "What were the hospital's rules as you understood them as far as having physical contact with patients? What were the rules?" Your answer, "The rules is not to hurt the patient, not hit him but just use restraint, you know." And in parenthesis there is the ent. I always do my job, did my job, just protect the nurses and that's what I was told to do by Bill Schneck, protect the hospital staff. And that was my job, and that's exactly what I did. I didn't abuse the patient, I just tackle him.
> Q. Mr. Rodriguez, referring to the same page [of your deposition], page 130. Was this testimony that you gave accurate? Line 23. Question from me, "So, you would agree with me that even if a patient punches you in the face, you cannot respond by in turn punching that patient in the face?""Answer, No, I'm not supposed to do that." "Question, You agree with me?" "Answer, Absolutely. I'm not supposed to hit him back. I'm supposed to block, defend myself."
> A. And that's exactly what I did.
> Q. That's, your testimony [and it] is truthful, correct? This deposition testimony is truthful testimony?
> A. Yes.
> Q. Okay. And on the next page, which I think you've turned to, 131?
> A. Yes, I've got it.
> Q. Is this accurate testimony that you gave on that

day at line 11: "Let me ask you this question. If on October 28 when this happened you had punched this man in the face after he punched you, that would have been wrong on your part?" Your answer, "After he hit me, if I punch him back?" "Question, Yes,?" "Answer, I'm wrong." "Question, And if that happened, would you agree with me that you should have been disciplined for that?" "Answer, Yes, disciplined, yes, disciplined." Is that all truthful testimony, sir?
A. Yes, but again, I never abused or hit the patient.

(Tr. Oct. 15, 1998, at 38-40 (emphasis added).) Plaintiff thus testified in no uncertain terms that, under the circumstances of th incident in question, it would have been punishable conduct pursuant to undisputed hospital policy to have punched the patient.[4] Plaintiff's own witness, Ms. Schaedel, testified that she had been struck by patients herself in the past but had never once struck back. When asked if she knew that to do so would be improper, she replied, "Oh yes. It's not done." (Tr. Oct. 14, 1998, at 40-41.) Moreover, Plaintiff failed to produce any evidence that this policy was selectively enforced against him in inconsistent or uneven fashion.

III. CONCLUSION

Plaintiff admitted that it would have been against Muhlenberg policy and practice to have punched a patient under the circumstances he faced on October 28, 1995. He also failed to produce any evidence that the relevant Muhlenberg decision-makers fabricated their belief that he had punched a patient unde those circumstances. Therefore, Plaintiff has failed to offer an evidentiary basis upon which a reasonable trier of fact could

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[4] Plaintiff conceded that, under the circumstances of the incident, the "reasonably believes" and "minimum amount of force necessary" mandates of Exhibit 9a-2 precluded him from hitting "John Doe." (Tr. Oct. 15, 1998, at 77.)

rationally conclude that Muhlenberg's proffered reason for firing him was pretextual. As Plaintiff himself admitted, any other conclusion would be nothing more than speculation. [5] Accordingly, the Court has entered judgment as a matter of law in favor of Muhlenberg.

BY THE COURT:

/s/ Bruce W. Kauffman, J.

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[5] At trial, Plaintiff acknowledged the truthfulness of the following testimony from his oral deposition:

Q. Please identify for me all of the reasons why you believe Mr. Mason fired you because you are Hispanic?
A. I don't have any reason. That's what I believe.
Q. Okay, can you explain why you believe that?
A. No, I can't explain why I believe but I believe that was the reason.
Q. You are speculating, isn't that right?
A. Yeah.

(Tr. Oct. 15, 1998, at 74.)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

MIGUEL RODRIGUEZ	:	CIVIL ACTION
Plaintiff	:	No. 97-CV-0636
v.	:	
MUHLENBERG	:	
HOSPITAL CENTER	:	
Defendant	:	

MEMORANDUM ORDER

AND NOW, this 25th day of June, 1998, upon consideration of the Motion of defendant Muhlenberg Hospital Center ("Muhlenberg") for Summary Judgment, and the response of plaintiff Miguel Rodriguez ("Rodriguez") thereto, it is ORDERED that Muhlenberg's Motion is DENIED.

"On summary judgment, it is not the Court's role to weigh the disputed evidence and decide which is more probative." *Lawrence v. National Westminster Bank New Jersey*, 98 F.3d 61, 67 (3d Cir. 1996). In ruling on summary judgment in an employment discrimination case, the Court's role is "to determine whether, upon viewing all the facts and inferences to be drawn therefrom in the light most favorable to the plaintiff, there exists sufficient evidence to create a

genuine issue of material fact as to whether the employer intentionally discriminated against the plaintiff." *Hankins v. Temple University*, 829 F.2d 437, 440 (3d Cir. 1987).

To discredit an employer's proffered reason for an adverse employment action, a plaintiff must show such weaknesses, implausibilities, inconsistencies, incoherence or contradictions in the reasons articulated by the employer that a jury reasonably could find them unworthy of belief. *Fuentes v. Perskie*, 32 F.3d 759, 765 (3d Cir. 1994). *See also Lawrence*, 98 F.3d at 67 ("[T]he question is whether the record could support an inference that the employer did not act for a non-discriminatory reason.").

For eleven years, Rodriguez' employment record as a security officer for Muhlenberg was unblemished. One night an intoxicated patient brought into the emergency ward by the police began physically attacking nurses. Security was called and Rodriguez responded. The drunken patient, a large man in excess of two hundred pounds, punched Rodriguez in the face, breaking his glasses. Although Rodriguez was at a great size disadvantage, he managed to restrain the patient until assistance arrived.

Rather than receive a commendation, Rodriguez was fired for violating Muhlenberg's alleged, *undocumented* policy that *no* circumstances should a security officer ever strike or hit a patient. In fact, Muhlenberg's *written* policy expressly authorizes security officers to "use force against a person when he reasonably believes such force is necessary for self

defense, in order to protect himself [or others] from bodily harm." [Exhibit "D" to Plaintiff's Response to Defendant's Motion for Summary Judgment]. Nothing in the record suggests that Rodriguez violated this written policy.

Moreover, Rodriguez denies under oath ever striking or hitting the patient, and claims that he was fired because of his age and national origin. While eyewitness testimony is in conflict, a nurse at the scene testified that she never saw Rodriguez strike the patient, and the administrator who investigated the incident could remember nothing about either the incident or her purported investigation. In sum, there is plainly sufficient evidence of record from which a reasonable jury could conclude that Muhlenberg's proffered reason for firing Rodriguez was mere pretext for a discriminatory reason. *See Furnco Const. Corp. v. Waters*, 438 U.S. 567, 577 (1978)("when all legitimate reasons . . . have been eliminated as possible reasons for the employer's actions, it is more likely than not the employer, who we generally assume acts only with some reason, based his consideration on an impermissible consideration such as race"): *Sheridan v. E.I. DuPont de Nemours & Co.*, 100 F.3d 1061, 1067-69 (3d Cir. 1996).

Accordingly, the issue of whether Muhlenberg fired Rodriguez for his alleged violation of an unwritten policy or for a discriminatory reason can only be determined by the finder of fact, and the Motion for Summary Judgment must be denied. *See Smith v. Borough of Wilkinsburg*, No. 97-CV-3133, _____ F.3d _____, 1998 WL 324608, at *8 (3d

Cir. June. 17, 1998)(jury is permitted to "use the evidence that supported plaintiff's prima facie case coupled with their rejection of the reasons offered by the employer for the employment decision to conclude that employer intentionally discriminated").

BY THE COURT:

/s/ Bruce W. Kauffman, J.

Entered June 26, 1998.

42 USC §2000e-2(a)-Unlawful employment practices

"It shall be an unlawful employment practice for an employer-

(1)...to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's...national origin;"

42US §623(a)-Prohibition of age discrimination

"It shall be unlawful for an employer-

(1)...to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileged of employment, because of such individual's age"